IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.1151 of 1982

Shri Jagannath Shantaram Nalavade
and ors. Petitioners
Vs.
Shri Raghunath Hari Nalavade & ors. Respondents

None for petitioners.
None for respondents.

CORAM: B.H.MARLAPALLE,J.

June 05, 2006.

ORAL JUDGMENT:

1. Partition decree came to be passed by the learned Civil Judge, Junior Division at Devrukh in R.C.S No.64 of 1960 and the same was sought to be executed in Darkhast No.35 of 1962. The Survey Officer vide his report dated 28/12/1967 noted that the partition was in accordance with the order of passed by the Court and the Collector accorded his sanction to proceed for execution vide his endorsement dated 6/2/1968. The original Respondent No.1-Shri Raghunath Hari Nalavade approached the Collector after more than 11 years on 9/3/1979 requesting the Collector to recall his order dated 6/2/1968. On 8/5/1979 the Collector informed him that the Court had passed the order on 24/10/1969 and he was required to take speedy action for execution of the decree. It was further noted that the

plaintiffs were put in possession of their respective shares on 18/3/1969 by the Tahsildar, Sangameshwar and thus the partition was completed. Under the circumstances, nothing further could be done and, therefore, the application dated 9/3/1979 was disposed off.

2. Raghunath Hari Nalavade filed Appeal No.GB/Desk/III/DRI/208 before the Divisional Commissioner, Mumbai Division and the said appeal was allowed by setting aside the Collector's order dated 5/1/1970 and the Collector was directed to reconsider the partition. Jagannath Shantaram Nalawade-the present petitioner challenged the said order before the Minister of State for Revenue by filing a revision application under Section 257 of the Maharashtra Land Revenue Code, 1966.

3. The petition was admitted on 31/1/1983 and interim relief in terms of prayer clause (b) was granted by the Division Bench of this Court on 31/1/1983 and consequently the orders impugned remained stayed and the Collector's order dated 8/5/1979 remained operative. Inspite of service, none has appeared for respondent no.3. The learned

counsel for the Respondent Nos.1, 2 and 4 to 7 is not present. Respondent No.1 has filed affidavit-in-reply.

4. The decree passed by the learned Jt. Civil Judge, Junior Division, Devrukh on 28/2/1962 shows that it was a consent decree as per the compromise arrived at Exhibit 44. The said compromise terms are on record. The Collector accorded his sanction to the partition on 6/2/1968 and it remained in force all along. After almost 11 years the respondents or one of them approached by way of revision before the Divisional Commissioner when the Collector refused to recall his order. The Divisional Commissioner proceeded to allow the appeal in utter disregard to the compromise terms which became part of the consent decree passed by the Competent Court and instead he relied upon the judgment delivered by the learned Judicial Magistrate First Class at Devrukh on 27/2/1973 in Criminal Case No.55 of 1971 filed under Sections 379, 427 read with Section 34 of IPC. The order is thus unsustainable and the revisional authority viz. the Minister of State for Revenue did not consider the decree of the lower Court based on the compromise terms between the parties and relied

upon the order passed by the learned Judicial Magistrate First Class in criminal proceedings. The petition, therefore, succeeds.

5. In the premises the petition is allowed and the Rule is made absolute in terms of prayer clause (a) but without any order as to costs.

(B.H.MARLAPALLE,J.)